Supreme Court, U.S.
FILED

02 12 JUL 1 _ 2002

No.

In The

Supreme Court of the United States

Christopher Langdon, Petitioner,

v.

Lyndo Tippett, Roy Cooper et al.

consolidated with:

Christopher Langdon, Petititoner,

v.

J.J. Swain, Jack Murdock, F.D. Martin et al.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For the Fourth Circuit

APPENDIX, PART III, FOR PETITION FOR WRIT OF CERTIORARI

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6893

[EXHIBIT #2]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT
OF NORTH CAROLINA
ASHEVILLE DIVISION
CASE NO: 1:01CV139-T

FILED: ASHEVILLE N.C.,
JUN 18 2001,
U.S. DISTRICT COURT
W. DIST. OF N.C.

CHRISTOPHER LANGDON,
Plaintiff,
v.
J.J. SWAIN, JACK MURDOCK, F.D. MARTIN, DAVE HENDERSON(ALL CURRENT OR FORMER EMPLOYEES OF THE N.C. DEPT. OF TRANSP.,
Defendants

CIVIL RIGHTS COMPLAINT FOR THE TAKING OF PROPERY WITHOUT JUST COMPENSATION, DUE PROCESS OF LAW & EQUAL PROTECTION UNDER THE LAW; FOR THE DESTRUCTION OF A BUSINESS; FOR THE DENIAL OF AND INTERFERENCE WITH CONSTITUTIONAL RIGHTS, STATE & FEDERAL; FOR A TRIAL BY JURY

(1) On 1 July 95 I owned two adjacent tracts

in Polk County North Carolina. The lower lot contained 4.54 acres (Tax Map P-36-60, a.k.a lot 60, Prometheus Point) and the upper lot which contained 2.29acres (Tax Map P-36-63), a total of 6.83 acres. *See:* Exhibit 1. These lots are traversed by NCSR 1116, also known as "Hogback Mtn. Road."

(2) On, or about, 1 July 95 a 15 sq. ft. chunk of dirt broke loose from the bank on the lower end of the 4.54 acre lot. The bank, and the chunk of dirt that broke loose from it, were within the NCDOT's right of way and were also within the boundaries of my property.

(3) I contacted a private road builder who was formerly employed by the NCDOT. He informed me that he believed that the first slide was caused by the steepness of the NCDOT's bank and the placement of the NCDOT's drainpipe uphill from the improperly sloped bank.

(4) I contacted the local maintenance office of the NCDOT and communicated my concern that future sides would eventually occur uphill and spread beyond the right of way. The local maintenance office of the NCDOT took no meaningful corrective measures.

(5) Subsequently, I contacted the District

Engineer of the NCDOT at the time, J.J. Swain. He denied NCDOT responsibility and indicated doubt as to whether or not another slide, or slides, would occur in his letter of 26 July 95 (Exhibit 2).

(6) In his letter of 26 July 95 Swain never indicated that the damage to my property was significant as of that date, nor did he predict that the damage would be significant. On the contrary, his letter tends to infer that the damage wasn't significant as of 26 July 95 and that it would not become significant.

(7) As of August 1st, 1995, only the single, aforementioned 15 sq. ft. chunk of dirt had broken loose from the NCDOT's bank on my property.

(8) Several weeks later, a second smaller chunk broke loose from the NCDOT's bank. I contacted private engineers who told me that the most likely causes of the slides were the steepness of the NCDOT's bank and the NCDOT's drainpipe that was placed uphill from the improperly sloped bank. The drainpipe added hydrostatic pressure to the improperly sloped bank.

(9) The NCDOT continued to deny responsibility despite my making Swain and Murdock (Swain's superior in Raleigh) aware of

the comments of the private engineers. The first excuse given by the NCDOT to shirk its responsibility for the micro-slides was that given by Swain in his letter of 26 July 95. Therein he indicated that the NCDOT was not responsible for the damage to my property because it claimed that it hadn't done any major work on the right of way through my property since 1962. This is a false, fraudulent argument. *See: Sherril v. Hwy. Commn.*, 264 NC 643 (1965). In *Sherril*, the NC Supreme Court cited, with approval, a case where a drainpipe caused the taking of property 50 years after it was installed.

The NCDOT has an ongoing, fiduciary duty to properly slope and maintain its banks and to properly place its drainpipes in order not to damage, or take, private property.

(10) The micro-slides continued within the NCDOT's right of way. Several NCDOT engineers began blaming me for the slides. The engineers made statements, in the public press and in their reports, blaming me because I had cleared a small area of trees for an house site on the property.

(11) Among those blaming me for the slides was Swain. His comments in the Hender-sonville News Times at the time, in effect, blamed me for the micro-slides.

(12) Dennis Allen of the NCDOT, a subor-

dinate of Swain's, blamed me, in effect fo the micro-slides in comments that appeared in the *Tryon Daily Bulletin.*

(13) F. D. Martin made three reports regarding the micro-slides. In one of those reports (Exhibit 3), Martin stated that I should pay for any cleanup costs if the slides should deposit debris on the pavement of NCSR 1116, thereby indicating that he believed that I was responsible for the micro-slides.

(14) Murdock made statements in letters and elsewhere in which he indicated that he believed that I was responsible for the micro-slides.

(15) At the suggestion of Swain, I contacted the North Carolina Department of Environment, Health and natural Resources (NCDEHNR). Mr. Beck from the Asheville Office of that department looked at the property in early1996 and left a message on my answering machine indicating that I hadn't broken any environmental laws and that he believed that the slides were caused by the NCDOT's drainpipe. Mr. Beck put his observations in an affidavit in 1998 (Exhibit 16).

(16) After I communicated the comments of Mr. Beck to swain and Murdock in 1996, the

NCDT came up with a new fraud. They began claiming that the micro-slides were caused by a geological formation. This false argument appeared in the second and third reports of F.D. Martin (Exhibits 4, 5) which were supplied to me by Swain and Murdock.

(17) By 1997 the micro-slides had progressed to the point where 6/10th's of an acre, out of the 6 and 83/100th's of an acre I owned at the time, had been destroyed (.6 out of 6.83).

(18) In 1995 I had Mr. Butler, a licensed surveyor in Polk County, prepare a plat of the area between the NCDOT's bank and the NCDOT's drainpipe. In 1997 I asked him to prepare an updated version of the area showing the extent of the damage to my property as of July 97. I then asked Mr. Butler to draw a line through the NCDOT's drainpipe and down through the area of my property that had been damaged by the slides. The line divided the area where the slides occurred into two almost identical areas (Exhibit 6) of the 3/10th's of an acre each. This rebutted the NCDOT's claim that a geological formation caused the micro-slides. How could a geological formation, possibly tens of thousands of years old, damage my property in two equal portions, one to the right of the NCDOT's drainpipe and one to the left of the NCDOT's drain-

pipe? The plat showed that the NCDOT's drainpipe is the axis of the slides on my property and hence, one of the causes of those slides.

(19) I made copies of the plat (Exhibit 6) and sent them to Swain and Murdock. The NCDOT, nevertheless, continued to deny responsibility for the slides.

(20) The other cause of the slides was the improper sloping of the NCDOT's bank. I asked Mr. Butler, the surveyor, to calculate the slope of the NCDOT's bank from data he had collected in 1995. This showed that the NCDOT's bank was extremely steep, almost vertical (Exhibit 7). Shortly after receiving the report I sent a copy to Swain and to Murdock, to no avail.

(21) I later learned, by accident, that there is a *Design Manual* published by the NCDOT. I was told by one of the authors of the manual, Mr. Shearin, that the NCDOT's bank on my property was not properly sloped according to the NCDOT's standards contained in the *Design Manual* (Exhibit 8).

(22) Swain, Murdock and Martin concealed from me the fact that the NCDOT's bank was not properly sloped according to the NCDOT's own standards.

(23) On 18 September 97, the Polk County Health Department issued a septic tank permit refusal for the 4.54 acres (Exhibit 9). The permit refusal was mailed to me and I received it approximately one week later.

(24) The NCDOT continued to deny responsibility.

(25) In 1998 I filed two complaint against the NCDOT. One complaint was filed in the North Carolina Industrial Commission. The other complaint was filed in the Polk County Clerk of Court's Office (98-cvs-139).

(26) The complaint filed before the N.C.I.C. sought relief for the damage to my reputation due to the false statements made by the engineers. A hearing on a dispositive motion of the NCDOT's was held via telephone in late 1998 or early 1999 with Deputy Commissioner Douglas Berger presiding. The attorney for the NCDOT, Michael Warren, stated during the hearing that any statements made by the NCDOT engineers stating that and/or inferring that I was responsible for the slides on my property were false and that the engineers making those statements knew they were false when they made them.

(27) In 1999 I reached a verbal agreement with Warren, the NCDOT attorney, to accept

$2,000 in exchange for release of all claims for the damage to my reputation.

(28) Subsequently, I receive a written agreement with additional words added to the verbal agreement that had not been discussed. I called Warren who informed me that the additional wording was added to the agreement by T.L. Malonee, an associate of his in the N.C. Dept. of Justice, who was representing the NCDOT in 98-cvs-139.

(29) The additional item in the written agreement (Exhibit 10) was a release of all claims for any damage to my real property by a slide (singular) occurring in June of 1995.

(30) I informed Warren that I would have to think over the agreement with additional wording. I had no discussions with Malonee with regards to what the additional wording that he inserted into the agreement meant.

(31) I signed a copy of the agreement and later tore it up. I then contacted Warren and asked him if the agreement was only for the damage to my reputation and the damage to my land as of 6/95. Warren said yes. I then signed another copy of the agreement and mailed it in. It was my understanding that the agreement was for the damage to my reputation done by the NCDOT engineers and for the damage to my real property by

the NCDOT as of June 1995. I would not have signed and mailed in the agreement otherwise.

(32) I would not have signed and mailed in the agreement if the NCDOT engineers had admitted from the beginning that the NCDOT's bank was not sloped according to NCDOT standards and/or if they had admitted that the NCDOT's drainpipe was one of the causes of the slides.

(33) The NCDOT has made admissions that it was responsible for the slides on my property. Those admissions were made subsequent to the signing of the settlement agreement (Ex. 10). In 98-cvs-139, Malonee stated in his brief that before the NC Court of Appeals "The Defendant-Appellee [the NCDOT] therefore submits that, when it ..came forward with a supporting affidavit establishing that the Plaintiff-Appellant's action accrued in July 1995..." (Exhibit 11, page 16, 3 January 2000). I do not agree with the date that Malonee states that my cause of action against the NCDOT and its engineers did accrue at some point in time, as I have stated herein.

(34) Swain signed an affidavit on February 10th, 1999 (Exhibit 12). In his false affidavit Swain claimed that:
" Based on my discussions with the plaintiff,

my personal inspection of the slide area, my review of Department of Transportation records, and my review of engineering reports...I am of the opinion that as of mid July, 1995, significant slope failure, or sliding had already occurred on the plaintiff's property, and clear evidence existed to suggest that additional failure would occur further up the slope if corrective measures were not taken by the plaintiff. I am also of the opinion, from my discussions with the plaintiff, that he was fully aware of these conditions on his property as of July 95." (Exhibit12, paragraph 10).

The damage to my property was not significant as of July 95 and Swain never told me that he believed that the damage to my property was significant as of July 95. I never indicated that the damage to my property was significant as of July 95. Swain's assertions to the contrary are completely untrue and unsupported by the letter that Swain wrote at the time (Exhibit 2). These are the examples of the fraud utilized by Swain to prevent me from fling a complaint against the NCDOT and against him for compensation for the taking of my property.

(35) In his false affidavit (Exhibit 12, paragraphs 4,5,6) Swain reiterated his allegation that the last work done on the right of way through my property was done

in 1962,which, as I have already shown herein, is completely irrelevant.

(36) In his answer to Interrogatory #3 in my First Set of Interrogatories in 98-cvs-139 (Exhibit 13), Swain stated that he did not know what caused the micro-slides on my property. Swain had previously tried to blame me for the slides, later blaming a geological formation and later stating that he did not know what caused the slides.

(37) It is my contention that there is no statute of limitations for a taking when there is no notice and opportunity to be heard prior to the taking and when the taker does not utilize the statutory remedy. *See: Hoyle v. City of Charlotte*, 293 Se 2d 101 (1970); *Mason v. Commissioners*, 96 Se 110 (N.C.S.Ct.-1918); *Eller v. Board of Educa-tion*, 89 Se 2d 144, 145[7] (N.C.S.Ct.1955); *White v. N.C.R.Co.*, 18 Se 330 at 334; *Low-man v. Abee*, 191 N.C. 147, 131 Se 277.

(38) It is my contention that NCGS 136-111, particularly the statute of limitations contained therein, is unconstitutional. I refer to my complaint (1:01cv107) filed in the Asheville Division of the Western District of North Carolina and incorporate it herein. That complaint contains a detailed argument as to why the statute of limitations in NCGS 136-11 is not constitutional when considered

as mandatory.

(39) No statute of limitations, if there is one, can run while the misrepresentations of the defendants continues. *Walker v. Dickerson*, 560 F. 2d 1184.

(40) The denials by the defendants that the NCDOT was responsible for the slides on my property were, and are, attempts to deny my constitutional rights to a redress of grievances against the government as guaranteed though USCA I, USCA XIV, the NC Constitution, Article I, Sections 18 & 19; The denials of NCDOT responsibility are also violations of 42 USCS 1981, 42 USCS 1983, 42 USCS 1985 and 42 USCS 1986; The denials by the defendants of NCDOT responsibility were, and are, attempts to prevent me from receiving just compensation for the taking of my property by the State of North Carolina, as guaranteed by the Constitution of the State of North Carolina, Article I, Section 19, USCA XIV, 42 USCS 1981, 42 USCS1983; 42 USCS 1985, 42 USCS 1986, the Magna Carta, and the common law.

(41) The false statements of the defendants which blamed me for the slides, or which blamed the slides on a geological formation, or, in which they denied knowledge of what caused the slides, were part of a conspiracy by the defendants to

deny me my right to just compensation for the taking of my property as guaranteed by the N.C. Constitution, Article I, Section 19, U.S.C.A. V, USCA XIV & the Magna Carta and the common law. The false statements regarding the causes of the slides were, and are, fraudulent acts, torts, violating the common law and the NC Gen. Stats.

The statements the defendants which gave false reasons for the slides on my property were also an attempt to prevent me from getting a fair and full redress of my grievances against the State of North Carolina. Therefore, the defendants violated the Magna Carta & the Common Law, the N.C. Constitution, Article I, Sections 18 & 19, USCA XIV, 42 USCS, Sections 1981, 1982, 1983, 1985 and 1986.

(42) The failure of the defendants to properly investigate the slides on my property and to take corrective measures to prevent the destruction of the value of my property, are violations of my right to due process of law, equal protection under the law, and just compensation for the taking of property by the government.

Therefore, the defendants violated my rights under the N.C. Constitution, Article I, Sections 18 & 19; the Magna Carta and the common law; USCA V & USCA XIV; 42 USCS 1981, 42 USCS 1982, 42 USCS 1983, 42 USCS 1985 and 42 USCS 1986.

(45) The plaintiff is aware that there may be rulings that state that 42 USCS 1981, 42 USCS 1982, 42 USCS 1985 and 42 USCS 1986 apply only to the deprivations of rights of minorities. It is the contention of the plaintiff that any such rulings are unconstitutional and in violation of U.S.C.A. XIV because they deny equal protection if they don't apply to all.

(44) In 1999 the defendants agreed to be deposed with regards to my complaint in 98-cvs-139. Subsequently, the defendants reneged on their agreement and refused to be deposed. The defendants have made a deliberate attempt to avoid providing information pertinent to these events, particularly under oath. Swain denied me access to the construction records of the right of way for NCSR 1116 bordering and traversing my property. I did not receive copies of the alleged construction records until 1999, after I discovered the existence of the NC Public Records Law and filed a complaint there under to receive them. It should be noted that Swain, or one of his successors, allowed T.L. Malone, a counsel for the NCDOT, to remove the original records to his office in Asheville, N.C. According to the NC Laws, state records are to be kept in the office in which they are normally used and it is illegal to remove them.

(45) In the year 2000 I filed a complaint against the defendants in the office of the Polk County Clerk of Court, Case # 00-cvs-206 (Exhibit 14). Said complaint is incorporated herein to this complaint. The response of the defendants (Exhibit 15) is also incorporated herein. The defendants have, in essence, admitted the charges made in 00-cvs-206.

(46) I withdrew my complaint in 00-cvs-206 for several reasons. For one, I learned after the filing of the complaint (00-cvs-206) that I could file a complaint against the defendants in the federal courts under diversity of citizenship and under federal law. In addition, the NCDOT has a ban in NC barring me from deposing any of the defendants, a bar which is a clear violation of due process of law and equal protection under the law.

Furthermore, the defendants' attorney had dispositive motion set for a hearing February of 2000. I also had several motions filed to be heard the same day but they were not put on the calendar. I contacted the judge who was to preside over the hearing on the defendants' motion because I had a motion for a con-tinuance filed which I hoped could be heard over the telephone. The presiding judge said such a hearing could not be held without the participation of the defendants' counsel (Mr. Moore) and left messages asking

him to return my calls, to no avail. I had no choice but to ask for a withdrawal without prejudice, which was granted. I had additional motions that were not scheduled that were important to my case.

(47) Plaintiff's should have every opportunity to a full and fair hearing, particularly a pro se plaintiff filing a civil rights complaint. *See: Haines v. Kerner*, 404 U.S. 519 (1972); *Noll v. Carson*, 809 F. 2d 1446 (9th Cir. 1987); *Satchell v. Dillworth*, 745 F. 2d 781, 782[4]; *Roseboro* v.*Garrison*, 528 F. 2d 309 (4th Cir.).

It should be remembered that the right to due process of law , and just compensation when a government entity takes property are all sub-stantive, essential, constitutional, civil rights. Property rights are civil rights: *Lynch v. Household Finance Corp.*, 405 U.S. 538 (1971). Civil rights' complaints are to be liberally construed and are not to be dismissed on technicalities: *See: Copeland v. Desert Inn Hotel*, 673 P. 2d 490 at 490[1-3] (1984); *Kaufmann v. Moss*, 420 F. 2d 1270 at 1276[14] (1970). USCA XIV is to be liberally construed to protect the rights of U.S. citizens. *See: Strauder v. West Virginia*, 100 U.S. 303, 307; *Bell v. Maryland*, 378 US 226 at 289 (1964). Complaints are to be determined on the merits: *See: Foman v. Davis*, 83 S.Ct. 227, 371 U.S.178 at 182 (1962).

My concern in 00-cvs-206 was that I might travel all the way to North Carolina and only the defendants' disparities motion would be heard. That has happened to me once before in 98-cvs-139 when I had several motions that were on the court calendar the same day that the defendant NCDOT had a hearing scheduled for its motion for summary judgment. The NCDOT's motion was heard and granted while my motions were not heard.

So far, I haven't had a full and fair hearing on these matters, hence, there has been no due process of law and equal protection under the law. It should be noted that that this complaint is not an attempt to ask the court to review
any decisions with regards to 98-cvs-139.

(48) The defendants gave no notice and opportunity to be heard before, or after, the taking of my property. The right to notice and opportunity to be heard is an essential constitutional right and an essential common law right. *See: Mc-Donald's Corp. v. Dwyer*, 450 SE 2d 888 at 891 (1994); *Board of Commissioners of Roxboro v. Bumpass et al.*, 233 N.C. 190, 63 SE 2d 144 at 147 (1950); *Bowie v. Town of West Jefferson*, 57 SE 2d at 369[1] (1950); *Stuart v. Palmer*, 30 Am Repts. 289, 74 N.Y. 183, 188; *Windsor v. Mc Veigh*, 93 U.S. 274 (1876); *Bernard v. Brewer*, Virginia Reports,

Volume II, 77, pages 99-100 (1795) (argued by John Marshall): *Phelps v. Chesson*, 34 N.C. (197) page 189 (1851); *Marshall v. Lovelass*, 1 N.C. 412; *Violet's Heirs v. The City Council of Alexandria*, 53 Am St. R. 825, 23 SE 909 at 909 (Va. 1896); *Mc Millan v. Robeson County*, 262 N.C. 413, 137 SE 2d 105 at 108[4] (1964).

The only exception to the constitutional requirement of prior notice and opportunity to be heard is in emergency situations. *See: Fuentes v. Shevin*, 407 U.S. 67 at 83, 92 S.Ct. 1983 at 1995 (1972); *Swan v. Williams*, 2 Mich. 427. The defendants have never alleged any emergency situation which required the defendants to allow the destruction of my property, and hence, its taking, without prior notice.

It should be noted that actual, written notice is required prior to the taking of property and constructive notice is not sufficient. *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 314, 70 S.Ct. 652, 657 (1950); *Schroeder v. New York City*, 371 U.S. 208, 83 S.Ct. 279; *Walker v. Hutchinson County*, 352 U.S. 112 at 117 (1956); *Mennonite Board of Missions Adams*, 462 U.S. 791, 103 S.Ct. 2706 (1983); *Miles v. D.C.*, 354 F. Supp. 577 (1973), 510 F. 2d 188 (1975).

The defendants' denials that the NCDOT was responsible for the damage to my property and their denials that the NCDOT

would, or had, taken my property, were denials of notice and opportunity to be heard. Hence, the defendants denied me due process of law and equal protection under the law as guaranteed by the Constitution of the State of N.C., Article I, Sections 18 & 19; The Magna Carta and the Common Law; U.S.C.A. XIV; 42 U.S.C.S. 1981, 42 U.S.C.S. 1982, 42 U.S.C.S. 1983, 42 U.S.C.S. 1985 and 42 U.S.C.S. 1986.

(49) Statutes authorizing the power of Eminent Domain are in derogation of common right and are to be strictly construed. A government appropriator is supposed to prove compliance with the statutory procedures: *City of Charlotte v. Mc Neely*, 175 SE 2d 348, 351[1-3] (1970); *N.C. St. Ports Authority v. So. Felt*, 161 SE 2d 47 at 49; *State v. Core Banks*, 167 SE 2d 385 at 385 [1-2] (N.C.1969); *Sharp v. Johnson*, 4 Hill 92, 40 Am Dec. 259 at 263 (N.Y. 1843); *Bernard v. Brewer*, 2 Washington 76, Va. Reports, Volume II, page 99 (Va. 17950 (argued by John Marshall); *Chapell v. U.S.*, 81 F. 764 at 766 (1897); *Cincinatti v.Vester*, 281 U.S. 439, 50 S.Ct. 360 at 360[5] (1930).

The failure of the NCDOT to institute condemnation proceedings against my property was a denial of due process of law and equal protection under the law as guaranteed by the Magna Carta and the

Common Law; the Constitution of the State of N.C., Article I, Sections 18 & 19; U.S.C.A. XIV; 42 U.S.C, Section 1981, 1982, 1983, 1985 and 1986.

(50) The failure of the defendants to admit responsibility for the damage to, and the taking of, my property; The failure of the defendants to give notice and opportunity to be heard prior to, or subsequent to, the taking of my property; and the failure of the defendants to institute condemnation proceedings and/or to take corrective measures to prevent the damage and the eventual taking of my property were, and are discriminatory acts. Most people in N.C. get due process of law and equal protection under the law when their property is taken; they get all the constitutional, common law and statutory protections which have been denied to me.

The denial of my constitutional rights and common law rights, as described herein, placed a heavy economic burden upon me. Whenever, the NCDOT takes property, denies the taking and doesn't utilize the proper condemnation procedures, it places a heavy economic burden upon the affected property owner.

The affected property owner will have to supply, at his own expense: surveys, plats, engineering reports and pay for an attorney, which is prohibitively expensive for most

people. This places a particularly heavy, often in surmountable burden upon those with the least financial resources. There is a pattern of discrimination against those of lesser financial resources by the NCDOT. Those who can afford an attorneys and have political influence within the NCDOT have a much better chance of promptly receiving just compensation. Class based, economic discrimination, particularly when involving substantial constitutional rights, is unconstitutional. *See Harper v. Virginia Board of Elections*, 383 U.S. 663 (1965).

Therefore, the failure of the defendants to condemn my property, was a denial of due process of law and equal protection under the law, and hence, a violation of the Constitution of the State of North Carolina , Article I, Sections 18 & 19; the Magna Carta and the Common Law; U.S.C.A. XIV; 42 U.S.C.S., Sections 1981, 1982, 1983, 1985 and 1986.

(51) In North Carolina, due process of law and equal protection under the law, require that payment is made prior to the taking of property. *See: Hines v. City of Rocky Mount*, 162 N.C. 409, 78 SE 510; *University v. Foy*, 5 N.C. (58) at (63), page 58 (N.C. 1805) The failure by the defendants to pay me just compensation for the taking of my property, as well as the conspiracy by the defendants to prevent me from receiving just compensation for the taking of my property , as well

as the conspiracy by the defendants to prevent me from receiving just compensation for my property which has been destroyed in value, is a denial of my rights under the Magna Carta and the Common Law; the N.C. Constitution, Article I, Sections 18 & 19; U.S.C.A. V. & XIV; 42 U.S.C.S. Sections 1981, 1982, 1983 1985 & 1986.

(52) The defendants actions and inaction caused a destruction of my real estate development and sales business. Prior to the events described herein, in 1994, I made over $40,000 in income from real estate activities. Since then I have made nothing from real estate activities. All of my available cash was invested in the 6-83 acres which the NCDOT rendered useless. The defendants tortuously interfered with my right to enter into contracts to sell my property and, hence, to purchase other properties, subdivide and resell them.

Furthermore, the right to earn a living is a constitutional right. *See: Truax v. Corrigan*, 257 U.S. 312, 42 S.Ct. 124 (1921). This right is guaranteed by the Constitution of the State of N.C., Article I, Section 1. *See: State v. Balance* 229 N.C. 764, 51 SE 2d 731 (1949); *Treats Enterps., Inc. v. Onslow County*, 83 N.C. App. 345, 350 SE 2d 365 (1986).

When the defendants took my business they took a substantial, constitutionally

protected property right, thereby violating the Magna Carta & the Common Law; the N.C. Constitution, Article I, Sections 18 & 19; U.S.C.A. I, V & XIV; 42 U.S.C.S., Sections 1981, 1982, 1983, 1985 &1986.

(53) The actions of the defendants and their inaction, as described herein, caused mea great deal of emotional distress and physical pain and suffering. I lost my car, most of my possessions and my good credit. Prior to these events, I had four Visa and/or Master Cards, a Sears Credit Card and gasoline credit cards. I had difficulty making a living because I had lost my car. By the time I had saved enough money to purchase another car, I no longer had a place to live. I had to live in my car during a harsh winter.

The false statements by the defendants that attempted to shift the blame for the slides onto me, particularly those statements that appeared in the local press, caused me, and my business, a great deal of harm. I was portrayed as a destroyer of the environment when, in reality, the defendants were responsible for the slides because they failed to take corrective action. I was harassed in the press, in person, and on the telephone.

Ironically, I was the catalyst for the state's purchase of 2000 acres for wildlife in Polk County. I didn't receive a commission for the sale. Prior to these events, I and my former partners had donated over $20,000 to

the NCDOT to pave "Dark Corners Road."

(54) The plaintiff has been a resident of Florida since 16 August 1999. Therefore, the plaintiff asks that the issues of this case be decided, and relief granted, under N.C. Law, under diversity of citizenship. In addition, the plaintiff asks that any relief asked for, but is not granted under N.C. law, be heard under federal law.

(55) This complaint is not a suit against the State of North Carolina; It is a suit against the defendants individually. The defendants acted under the color of state law.

(56) The plaintiff hereby requests a jury trial upon all issues. Under N.C. law, a party to a complaint has the right to a jury trial under the Constitution of the State of North Carolina, Article I, Section 25 for complaints involving property. In addition, under N.C. Law a party to a complaint has the right to a jury trial for deprivations of constitutional rights.

" ...by the constitution every citizen had undoubtedly a right to a decision of his property by a trial by jury...that if the Legislature could take away this right, and require him to stand condemned in his property without a jury trial, it might with as much authority require his life to be taken

away without a trial by jury." Bayard *v.* *Singleton*, 1 Martin 48 (N.C. 1787) cited in *Hoke v. Henderson*, 15 N.C. 1, 25 Am Dec at 689 (1833).

" ...acts inconsistent with the rights of freemen as declared in the Constitution, which takes away their constitutional privileges.. without a previous trial by jury..are not laws of the land." *Cruden v. Neale*, 2 N.C. (341), page 441 (1796).

(57) Therefore, the plaintiff respectfully requests the following relief: $77, 179.00 compensatory damages for the taking of my real property (6.83 acres) in Polk County, N.C. and interest thereon; Payment for the taking of my business in the amount of $40,000 per year from whatever date is appropriate; $200,000 in compensatory damages for the reckless, callous and malicious deprivation my Common Law and Constitutional rights and the pain, suffering and emotional distress caused by the defendants; $50,000 in paralegal expenses for the work done by me with regards to this matter; $300,000 in exemplary and punitive damages; Any and all survey expenses, engineering expenses, mailing costs, copy expenses, attorney's fees, court costs, stationary expenses, travel expenses, notary expenses, and all other expenses; any other relief that is deemed just.

Christopher Langdon, Plaintiff
"s/_____."
1835 Edwin Blvd., Winter Park, Fl. 32789---
407-647-7539
VERIFICATION OF COMPLAINT AGAINST NCDOT ENGINEERS- I, Christopher Langdon, being duly sworn, hereby depose and state that: I am the plaintiff in this action and author of this complaint; that the contents are true of my own knowledge, except those matters alleged on information and belief, and those matters I believe are true.

Christopher Langdon, Plaintiff
"s/_____".
Suscribed to and sworn before me, after producing Florida Driver's License # L523-104-51-385-0, this the 8th day of June, 2001.
Notary Public "s/_____."
Yvonne I. Bhikha
MY COMMISSION # CC804494
EXPIRES: May 24th, 2003
Bonded Thru Notary Public Underwriters

{Exhibit #3}

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF NORTH CAROLINA
ASHEVILLE DIVISION
NO:1:01-CV-139-T

CHRISTOPHER LANGDON,
PLAINTIFF,

V.

J.J. SWAIN,

F.D. MARTIN,
JACK MURDOCK,
DEFENDANTS

AMENDED MOTION
FOR EXTENSION OF
TIME TO ANSWER

Fed.R.Civ.P.6(b)

NOW COMES Defendant Jack Murdock, through counsel, and moves to amend his Motion for an extension of Time To Answer, and moves the court pursuant to Rule 6(b) of the Federal Rules of Civil Procedure to extend the time within which he may answer, move or otherwise plead for an additional thirty (30) days, up to and including August 17, 2001.

In support thereof, counsel shows unto the court the following:

(1) On June 8, 2001, Plaintiff filed a Summons and Complaint against Defendants in the United States District Court, Western District of North Carolina, captioned as Case

Number 1:01-cv-139-T.
(2) Plaintiff alleges an inverse condemnation of his property and seeks over $600,000 in damages.
(3) On July 19, 2001, Defendant served by mail a Motion for Extension of Time to Answer.
(4) Said motion incorrectly stated that the Summons and Complaint in the instant case "were served by certified mail on J.J. Swain on July 2, 2001, and the other defendants were similarly served at various times thereafter."
(5) Counsel has since determined that J.J. Swain and F.D. Martin were in fact served on June 29, 2001, while Jack Murdock was served on June 28, 2001.
(6) Jack Murdock is a retired employee of the North Carolina Department of Transportation (NCDOT). Plaintiff's complaint arises out of actions occurring while Mr. Murdock was employed by the NCDOT. The Attorney General's Office is representing Mr. Murdock in this action.
(7) Mr. Murdock mistakenly disposed of Plaintiff's complaint when first received by him, as he believed it was related to an earlier case filed by Plaintiff in state court.
(8) Mr. Murdock would be greatly prejudiced by a default judgment in this case.
(9) Additional time is needed to thoroughly investigate this matter in order to properly prepare an answer or other appropriate responsive pleading.

(10) The time for answering expired on July 18, 2001. Defendant's original motion was served on July 19, 2001.

WHEREFORE, Defendants respectfully requests that this Amended Motion to Extend Time to Answer be allowed.

This the 20th day of July, 2001.

ROY COOPER
ATTORNEY GENERAL

By "s/_____".
Robert O. Crawford, III
Special Deputy Attorney General
N.C. State Bar No. 12373
N.C. Dept. of Transp.
Attorney General's Office
1505 Mail Service Center
Raleigh, NC 27699-1505
Telephone: (919) 733-3316
ATTORNEYS FOR DEFENDANTS

{Exhibit # 4}

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF NORTH CAROLINA
ASHEVILLE DIVISION

CHRISTOPHER LANGDON,
PLAINTIFF,

V.

J.J. SWAIN,
F.D. MARTIN,
And JACK MURDOCK,
DEFENDANTS

AMENDED MOTION

FOR EXTENSION OF

TIME TO ANSWER
Fed.R.Civ.P.6(b)

NOW COMES Defendants J.J. Swain and F.D. Martin, through counsel, and move to amend their Motion for an Extension of Time to Answer, and move the court pursuant to Rule 6(b) of the Federal Rules of Civil Procedure to extend the time within which they may answer, move, or otherwise plead in response to Plaintiff's complaint, for an additional thirty (30) days, up to and including August 17, 2001.

In support thereof, counsel shows unto the court the following:

(1) On June 18th, 2001, Plaintiff filed a Summons and complaint against Defendants in United States District Court, Western District of North Carolina, Captioned as Case Number

1:01-cv-139-T.

(2) Plaintiff alleges an inverse condemnation of his property and seeks over $600,000 in damages.

(3) On July 19, 2001, Defendants served by Mail a Motion for an Extension of Time to Answer.

(4) Said motion incorrectly stated that the Summons and Complaint in the instant case "were served by certified mail on J.J. Swain on July 2, 2001, and other Defendants were similarly served at various times thereafter."

(5) Counsel ahs since determined that J.J. Swain and F.D. Martin were in fact served on June 29, 2001, while Jack Murdock was served on June 28, 2001.

(6) Additional time is needed to thoroughly investigate this matter in order to properly prepare an answer or other responsive pleading.

(7) The time for answering had not expired as of the date of the original motion.

WHEREFORE, Defendants respectfully request that this Amended Motion to Extend the Time to Answer be allowed.

This the 20th day of July, 2001.

ROY Cooper
ATTORNEY GENERAL
By "s/_____".
Robert O. Crawford III
Special Deputy Attorney General
N.C. State Bar No: 12373
N.C. Dept. of Transp., Attorney General's Office,

1505 Mail Service Center, Raleigh, NC 27699-1505: Telephone: (919) 733-3316
Attorneys for Defendants

[EXHIBIT #5]

BLE
BUNNELL-LAMMONS ENGINEERING
GEOTECHNICAL, ENVIRONMENTAL
AND CONSTRUCTION MATERIALS
CONSULTANTS

January 8, 2002
Mr. Chris Langdon
1835 Edwin Blvd.
Winter Park, Florida 32789

Subject: Tryon Slope
Tryon, N.C.
BLE Project No. J01-1352-02

Mr. Langdon,

In response to your letter of November 23, 2001, we are providing this letter summarizing our observations of an active slope failure on your property in Polk County, North Carolina. Our Bill Matthews, P.E., conducted site observations on two occasions. The first observations were conducted on August 10, 1995 while Mr. Matthews was employed by Law Engineering, Inc. (reference Law Project No. 30220-5-

7105.01 letter dated September 14th, 1995). His subsequent observations of the site were conducted on January 25, 1999 while employed with Bunnell-Lammons Engineering, Inc. (reference BLE Project no. J99-1352-01 letter dated February 10, 1999). A summary of the observations and opinions based on these two site visits are presented below.

The amount of property adversely affected by the slope failure was considerably greater in January 1999 than when first observed in August 1995.

Although we have not performed site specific sub-surface exploration, laboratory tests or detailed slope stability analyses, based on our previous experience it is our opinion that two of the most significant factors affecting the stability of this slope are:
(1) The relatively steep earthwork cuts at the toe of the embankment, apparently performed as part of the prior road construction activities.
(2) The concentration of surface water runoff in the slide area resulting from the corrugated metal drainage pipe passing beneath the roadway and discharging flow near the top of the slide area (as observed in January 1999).

A detailed site exploration, laboratory

testing and slope analyses would be required to adequately evaluate the stability of the slope. However, it is certainly true that with all other factors being the same, the activities at the this site (excavation of the toe of the slope and concentration of surface water near the crest of the slide zone) have served to reduce the stability of this slope and expedite the observed slope failure. Failures of this type tend to get progressively worse and it is likely that the upper end of the sliding mass of soil could eventually encompass Hogback Mountain Road unless remedial measures are taken to stabilize the slope.

As mentioned previously, the opinions expressed herein are based on site visits conducted in 1995 and 1999. We have not conducted additional site visits other than mentioned herein and we cannot attest to the current state of the slope or how it has changed since last observed on January 25, 1999.

We appreciate the opportunity to provide our professional services on this project. If you have any questions or require additional

assistance, please call.

Sincerely,
BUNNELL-LAMMONS ENGINEERING, INC.
"s/_____." 1/8/02
William A. Matthews, P.E.
Chief Engineer
Registered, N.C. # 18375
Copy: Dan Bunnell

[EXHIBIT#6]

STATE OF NORTH CAROLINA	SUPERIOR COURT DIVISION
POLK COUNTY	98-CVS-139

AFFIDAVIT

CHRISTOPHER LANGDON,
PLAINTIFF,

vs.

THE N.C DEPT. OF TRANSPORTATION

I, Mr. William Beck of the NCDEHNR, being duly sworn, deposes and says:

(1) I visited the site of the slope failure on Mr. Langdon's property in Polk County on Hogback Mtn Rd. in early 1996. I saw no evidence that Mr. Langdon had broken any environmental laws which we administer. I saw no evidence that he had done anything to disturb the soil. Some trees had been cut but the stumps had been left and the underbrush remained.

(2) It appeared to me that the slope failure might have been caused by a drainage pipe. However, I am not an engineer and can not

say so with certainty.

This the 11th day of March, 1999.

"s/_____"

William Beck

Sworn to and suscribed before me, this the 11th day of march, 1999.

"S/_____."

Anne H. Gaddey

Notary Public

My commission expires 4-22-00

[Exhibit # 7]

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT
CASE NO: 01-1975
(FORMERLY 01-2019,
CA-01-139, CA-01-107]

FILED
OCT 02 2001
U.S. Court of Appeals
Fourth Circuit

CHRISTOPHER LANGDON,
Plaintiff,
versus
J.J. SWAIN, JACK MURDOCK, F.D MARTIN,
Defendants

CHRISTOPHER LANGDON,
Plaintiff-
versus
LYNDO TIPPETT, et al.
Defendants

INFORMAL BRIEF REGARDING THE GRANTING AN EXTENSION OF TIME TO RESPOND TO DEFENDANTS MURDOCK, SWAIN & MARTIN AND THE FAILURE TO FILE AND ENTRY OF DEFAULT AND GRANT A DEFAULT JUDGMENT

[EDITED]

" The entry of default is not discretionary, it is mandatory, evidenced by the use of the word 'shall' [Rule 55(a), F.R.Civ.P.] rather than the permissive, discretionary, "may." I believe that the failure to enter the default is the result of prejudice against me because my suit is against state employees defended by the State of N.C. and because I am proceeding, through no choice of my own, pro se." [page 2, original format]

" I did allege that my property was 'taken' without just compensation, that the defendants used fraud to conceal that fact and that they blocked my right to access to the courts, my right to due process of law and equal protection under the law." [page 4 (all page numbers are for the original format)]

"...the counsel for the defendant[s] never alleged "excusable neglect" or "good cause shown" in any of the three motions he filed for an extension of time. Therefore, all three motions should have been denied and struck, and default judgment and entry should have been entered against the defendants. However, should the Honorable Court of Appeals, over my objections, require that I must provide arguments with regards to

excusable neglect in order to prevail, I will.

The defendants'.. 'amended motion' states in paragraph 7: 'Mr. Murdock mistakenly disposed of Plaintiff's complaint when first received by him, as he believed that it was related to an earlier case filed by Plaintiff in state court.' It is clear that Murdock knew that the summons and complaint were court documents when he 'disposed' of them. That alone shows contempt for the judicial system. It certainly doesn't indicate 'excusable neglect. ...Furthermore, I don't believe that Murdock beleived that the documents were related to a state case, rather than a federal case... Murdock knew that the documents were related to a case. To have known that, Murdock must have opened the envelope. When he opened the envelope, Murdock clearly saw that the Summons and the Complaint were for a case in the U.S. District Court, not in a state court. I believe that the statement that Murdock thought the papers were for a state court proceeding was made for an improper purpose, sanctionable by granting the motion for default entry and judgment.. I also believe that Murdock wanted to default. ....Murdock' deliberate 'disposal' of the legal documents does not explain why R. Crawford did not file a response, or, a timely motion for an extension of time to respond. He was

aware of the complaint as of 9 July 2001, if not sooner, and he had an opportunity on that date , during our phone conversation re 1:01cv107, to ask when the summons and complaint were served in 1:01cv139, and to discuss any motion for an extension of time to answer. He did not do so....R. Crawford never consulted with me before filing any of his motions, contrary to the local rules."[pages 5-6].

"..to get an extension of time after the time for responding had expired, he was required to assert that the defendants had a meritorious defense and that I would not be prejudiced by said extension of time...It should also be noted that the defendants were in default, whether the default was physically entered in the records of the W.D.N.C. Asheville, or not." [page 7].

" I made very effort to get the NCDOT engineers to take responsibility for their failure to properly maintain the NCDOT right of way. Their failure to do so led to the destruction of my property and my real estate business in I have not sold a single piece of property in N.C. since... I lost my car and my credit cards. I had impeccable credit, prior to these events... One woman was encouraged by Murdock to believe that I was responsible for

the slides....[NCDOT Attorney Michael] Warren admitted that the statements by the engineers [Swain, Martin and Murdock] that indicated that I was responsible for the slides were false and that they knew they were false. I have made verified statements to that effect... Mr. Warren has never denied these facts, although he has had plenty of opportunity to do so. No one from the NCDOT/ N.C. Dept. of Justice has ever presented any affidavit by him to the contrary in any court proceedings..or anywhere else." [pages 12- 13]

" ....I did everything I could to get the defendants to take responsibility. Instead, the NCDOT suggested that I build a retaining wall within their right of way and move their drainpipe, at my expense. In his letter of 26 July 95, swain alludes to that, stating that I should get his permission before engaging in the construction activity...It should also be noted that the NCDOT engineers withheld from me the fact that their bank, which was on my property, and within their right of way, was not sloped according to NCDOT standards in their design manual. That is why the attorneys for the NCDOT have blocked every effort I have made in other court proceedings to have the engineers deposed." [page 20]

" The attorneys for the NCDOT have done

everything to have the possible to prevent me from having the NCDT engineers deposed. The NCDOT engineers reneged on an agreement I had with them to be deposed. Obviously they are hiding something. What they are hiding is the fact that the NCDOT bank was not sloped according to their own standards, which combined with the drainpipe above it, caused it to fail.

You can see why the NCDOT engineers do not want to testify under oath. Perhaps that is why Murdock disposed of the Complaint and Summons. Perhaps his conscience was bothering him as well, and he wanted to default." [pages 20-21]

" Therefore, the plaintiff respectfully requests that.. the Honorable U.S. Court of Appeals utilize the rule of law which allows the papers of pro se parties to be liberally construed." [page 21-22]

I, Christopher Langdon, hereby solemnly affirm that I am the author of this complaint and that everything contained herein is true and correct, except those matters asserted on information and belief, and those matters I believe to be correct and true.

Christopher Langdon
Plaintifff-Appellant "s/_____".

I hereby certify that I have mailed a copy of this informal brief and attached papers to: R. Crawford III, 1505 Mail Service Center, Raleigh,N.C. 27699-1505; The Clerk of Court, The U.S. Court of Appeals, Fourth Circuit, 1100 E. Main St., Suite 501, Richmond, Va. 23219-3517, this the 1st day of Oct., 2001

Sworn to and suscribed before me, this the 1st day of October, 2001

Notary public "s/_____".

Shirley Frere
MY COMMISSION EXPIRES
JULY 16, 2005
#DD042430
Bonded Thru Troy Fain Insurance

[Exhibit #8]

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT
CASE NO: 01-1975
(FORMERLY 01-2019, CA-01-139, CA-01-107)
FILED
0CT 02 2001
Fourth Circuit
U.S. Court of Appeals

CHRISTOPHER LANGDON,
Plaintiff,
v.
LYNDO TIPPETT et alia,
Defendants

CHRISTOPHER LANGDON,
Plaintiff,
v.
J,J, SWAIN et alia,
Defendants

INFORMAL BRIEF REGARDING THE SECOND APPEAL TO THE UNITED STATES DISTRICT COURT OF APPEALS, FOURTH CIRCUIT, FROM THE U.S DISTRICT COURT, W.D.N.C., ASHEVILLE DIVISION

[EDITED]

" I am not proceeding pro se choice, but because the defendants have destroyed my property and my livelihood, thereby preventing me from hiring an attorney." [page 1]

" I have been subjected to undisguised hostility by judges in N.C., both state and federal...I have never gotten a fair hearing on any matter contained herein, or on any related matter." [page 2]

" I am stating that I doubt that Judge Thornburgh can be impartial in these matters. I believe that events subsequent to the filing of my motion to recuse clearly indicate Judge Thornburgh's bias." [page 4]

" The bias of Judge Thornburgh is clearly visible from his actions...The right to a fair and impartial tribunal is an important, fundamental constitutional right.

' The Due process clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases...The neutrality requirement helps to guaranty that life, liberty, or property will not be taken on the basis of erroneous or distorted conceptions of facts of law..it preserves both the appearance and the reality of fairness..by ensuring that arbiter is not predisposed against him. The requirement of neutrality has been jealously

guarded by this Court...and this 'stringent rule may sometimes bar trial judges who have no actual bias and who would do their very best to weigh the scales of justice.' *Marshall v. Jerrico, Inc.*, 100 S.Ct. 1610, 1613 (1980)."
[page 5]

" Because the defendants in 01-139 are in default, I shouldn't have to make any arguments regarding res judicata... Nothing contained herein should be construed as a waiver of any objections I have, nor should it be construed as an intention to litigate issues by implied consent.

(3)Was the plea of res judicata properly pled and argued?

Before I address this issue, let me state that the decision in 98-cvs-139, which the defendants rely upon for res judicata, is void. Nothing contained herein should be construed as a waiver of my claim that 98-cvs-139 is void...if I am required to make further arguments regarding res judicata, I will."
[pages 6-7]

" I believe the fact that no N.C. case law was cited, or applied, should defeat the plea of res judicata, however, if I am required to continue, over my objections, I will.

(5) Is the plea of res judicata available on a motion to dismiss ?

It should be note that under N.C. law, res judicata is not available on a motion to dismiss.

'Properly raised, issue of res judicata is... ..not available on a motion to dismiss.' *Reid v. Holden*, 242 N.C. 408, 88 SE 2d 125 at 125 (N.C. 1955).

'Res judicata is an affirmative plea..which must be supported by competent evidence..the defense is not available on a motion to dismiss.' *Sanderson v. Aetna Life Insurance Co.*, 218 N.C. 270, 10 SE 2d 802, 803[2] (N.C.1940)...

...the burden of proof under N.C. law is upon the person asserting the defense of res judicata..The defendants presented no evidence whatsoever as to what issues were raised and actually determined in 98-cvs-139." [pages 8-9]

" Whether an issue.. was actually litigated and determined must be determined by a review of the entire record, *Reid v. Holden*, 242 N.C. 408, 88 SE 2d 125 (1955).' *Thomas v. Mc Innis & Associates*, 349 SE 2d 552 at 563 (1986)...

' A plea of res judicata cannot be determined on pleadings alone but only after evidence has been presented.' *Beam v. Almond*, 271 N.C. 509, 157 SE 2d 215 at 216[4] (1967).

The defendants never presented any evidence whatsoever with regards to 98-cvs-139; no briefs opinions, etc. to base a plea of res judicata upon....Therefore, it is my contention that it was incumbent upon the defendants' counsel to not only properly
assert the facts, but to provide a complete copy of the record of 98-cvs-139..I believe that it is too late for the defendants' counsel to do so now." [page 10]

" ..res judicata precludes subsequent action between the same parties or their privies *based on the same claim.' Hales v. N.C. Insurance Guaranty Ass'n.*, 445 SE 2d 590, 591[3] (1994)...
... 'The language therefore, which is so often used, that a judgment estops not only every ground for recovery ..actually presented..but also as to every ground which might have been presented.. When applied to the demand or claim in controversy..But where the second action between the same parties is upon a different claim in controversy, or demand the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding of the verdict was rendered.. Therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action, the inquiry must always be as

to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined.' *J.T. Mc Teer Clothing Co. v. Hay*, 163 N.C. 495, 79 SE 955 at 957 (1913)." [page 11]

" For judgment to constitute res judicata in subsequent action, there must be identity of parties, the subject matter..relief demanded also the identical question must have been considered and determined.' *Shaw v.Eaves*, 262 N.C.656, 138 SE 2d 520, 521." [page 12]

" It has already been shown that Judge Thornburgh, and R. Crawford, counsel for the defense, completely and intentionally ignored the N.C. law of res judicata." [page 17]

" Does the decision in 98cvs139 prevent relief in 01-139 through res judicata ? For the numerous reasons stated previously, I do not believe that I should be required to answer that question in order to prevail. The defendants filed no response in 01-139, nor did they file a timely, or legally sufficient, motion for an extension of time to answer..However, if the Court should require me to respond to the arguments brought forth by Judge Thornburgh, I will." [page 17]

" The ground for privity is property, not

personal relation..[it] rests on some actual mutual or successive relationship to the same right of property.' *Masters v.Dunstan*, 256 N.C. 520, 124 SE 2d 574, 577 (N.C.1962)... ... ' North Carolina Supreme Court would decline to adopt doctrine of 'virtual representation' ..doctrine was difficult to apply and doctrine amounted to abandonment of traditional concepts of res judicata, collateral estoppel and privity.' *Hale v. Natl. Ins. Guaranty Assoc.*, 445 SE 2d 590, 591 (N.C. 1994). " [page 18]

" My complaint in 01-139 is for the fraud of the defendant NCDOT engineers. They perpetrated a fraud on me, and the courts, they blocked my access to the courts, an important right under U.S.C.A. I (*See*: *Ryland v. Shapiro*, 708 F. 2d 967 (5th Cir.1983)." [page 25]

" The decision in 98-cvs-139 is void for numerous reasons. I asserted in my papers before the District Court that I did not have a full and fair opportunity to litigate my claims in the state courts." [page 27]

"[NCDOT attorney] Malonee flatly stated that my cause of action for the taking of my property had accrued..without explaining why he and the NCDOT engineers had denied it for

so long." [page 29]

" I was not given an opportunity by the District Court [Asheville Div.] to make a full exposition of the complete lack of due process of law in 98-cvs-139." [page 29]

" Another reason that 98-cvs-139 is void under N.C. law is the fact that the noteholders and trustees were not enjoined..

' In an inverse condemnation action, the trustees and holder of a note on the real property in question were necessary parties united with interest with the owners..' *North Carolina Civil Procedure*, 2d Ed, G. Gray Wilson, Volume I, Section 19-3, page 379

' Since persons united interest are necessary parties, a judgment that determines a claim before proper efforts have been made to enjoin one who is united in interest is void.' Ibid, Section 19-2.....

' When absence of necessary parties is disclosed, trial court should refuse to deal with the merits until the necessary party is brought in.' *White v. Pate*, 304 SE 2d 199 at 199[3] (N.C. 1983).

See also: Strong's 111 N.C. Index 4th, Section 297, page 544. For these reasons, and many others, the decision in 98-cvs-139 is void and subject to collateral attack. *See: Thompson v. Whitman,* 85 U.S. 457 (1873); *Hovey v. Elliot,*

167 U.S. 409, 17 S.Ct. 841 (1897); *Eliot et al. v. Piersol et al.,* 1 Peters (26 U.S.) 328 (1828). Thompson has been relied upon at least once in recent N.C. decisions." [page 30]

I, Christopher Langdon, solemnly affirm under oath that everything contained herein is true and correct, except those matters that are asserted under information and belief, and those matters I believe to be true.

Christopher Langdon "s/_____."
1835 Edwin Blvd., Winter Park, Fla. 32789
407-647-7539
I hereby also certify that a copy of these briefs has been mailed to: R. Crawford, 1505 Mail Service Center, Raleigh, N.C. 27699-1505.
Suscribed to and sworn before me, this the 1st day of October, 2001, by Christopher Langdon- FLDL # L523-104-51-385 -0.

Notary Public " s/_____".
Yvonne I. Bhikha
My Commision # CC 804494
EXPIRES : May 24, 2003
Bonded Thru Notary Public Underwriters

Exhibit # 9

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT
01-1975
(FORMERLY 01-107, 0-139)
FILED
NOV 15 2001
U.S. Court of Appeals
Fourth Circuit

CHRISTOPHER LANGDON,
Plaintiff-Appellant,
versus (01-107)
J.J. SWAIN,
JACK MURDOCK,
F.D. MARTIN,
Defendants-Appellees

CHRISTOPHER LANGDON,
Plaintiff-Appellant,
versus (01-139)
LYNDO TIPPETT,
ROY COOPER,
THE N.C DEPT. OF JUSTICE,
THE STATE OF NORTH CAROLINA

MOTION FOR SANCTIONS
[EDITED]

Nothing contained herein should be

construed.. as a waiver to my objections to the extension of time granted to the defendant-appellees by the District Court, or any other objections I have raised. Furthermore, nothing contained herein should be construed as an intent to litigate any issues by implied consent....
.....In his ..brief the counsel for the defen dants-appellees stated:
'NCDOT and its employees have consistently denied any responsibility for the landslide or landslides, and have denied causing Plaintiff any other harm.' pages 7-8, 'Appellees Brief.'... any statements or inferences that the NCDOT has consistently denied responsibility for the slides on my property are false...." [pages 2-3]

" T.L. Malonee, counsel for the NCDOT, stated.. *'the Plaintiff-Appellant's cause of action accrued...'* Of course, if the NCDOT, its engineers, or its various attorneys, had admitted earlier that my cause of action had accrued, I would have immediately filed a complaint. [page 4]

" It is obvious that, despite Crawford's denials, the NCDOT has admitted that they have taken my property without just compensation." [page 5]

" The assertion by T.L. Malonee, counsel

for the NCDOT..is a plain, unequivocal, unqualified admission that my cause of action for a taking..had accrued. It renders all the denials of responsibility [by] the NCDOT and its engineers, and its attorneys false and fraudulent." [page 7]

" In 00-cvs-206. I alleged that: Swain, Murdock and Martin failed to corrective measures and prevent the taking of my property, that they covered up NCDOT liability; that they intentionally prevented me from obtaining just compensation for the taking of my property...The defendants in 00-cvs-206 pled a statute of limitations in that case...It was not pled in the alternative. Therefore, the defendants in 00-cvs-206, including J.J. Swain, Jack Murdock and F.D. Martin..judicially admitted liability...I did take a voluntary dismissal without prejudice in 00-cvs-206. The defendants had filed..motions. I also filed motions that were supposed to be heard on the same day, including a motion to enjoin the noteholders and trustees, necessary parties, as required by N.C. law. However, the defendant's motions were placed on the trial court calendar and my motions were not.

I had similar problems in 98-cvs-139...I.. filed motions to compel discovery, pending appeal The trial court administrator refused to

place the motions on the calendar. The same person refused to place my motions on the calendar in 00-cvs-206. I tried to get a continuance but was unable to get the cooperation of [their] attorney, W. Richard Moore, who refused to return my telephone calls and the judge would not grant a continuance ex-parte, although I was in Florida at the time. ." [pages 11-13]

" Because I felt that I had exhausted the state remedies and because of the unfairness of those procedures. I filed suit in the W.D.N.C. against Swain, Murdock and Martin (01-139). I alleged similar, more detailed allegations against them in the federal case. In his.. brief in this matter..R. Crawford abandoned the plea of limitation...Therefore, the Plaintiff respectfully requests the following relief: (a) A declaratory judgment stating that : (1) Robert Crawford has violated Rule 11 of the Federal rules of Civil Procedure because of his denial of liability by the defendants... (2) That the defendants Murdock, swain and Martin..have judicially admitted their liability as outlined in 0-139 (now 01-1975); That the defendants Swain, Martina and Murdock have abandoned any plea of a statute of limitations.." [page 15]..Any further relief that the Court may deem just. Respectfully.

I solemnly affirm that everything herein is true and correct.

Christopher Langdon,
Plaintiff-Appellant "s/_____".
1835 Edwin Blvd., Winter Park, Fla. 32789-
407-647-7539—I hereby certify that I have mailed a copy of this complaint to: Robert Crawford, 1505 Mail service Center, Raleigh,N.C. 27699-1505.

Sworn to and suscribed before me this the 14th day of November, 2001.

Notary public "s/_____".
L. Frank Fussell
11/14/01
My Commission CC992164
Expires February 16, 2005
CC # 992164

[Exhibit #10]
UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT
FILED
NOV 28 2001
U.S. Court of Appeals
Fourth Circuit

CHRISTOPHER LANGDON,
Plaintiff-Appellant
versus (01-107)
LYNDO TIPPETT, [et al]
Defendants-Appellees

CHRISTOPHER LANGDON,
Plaintiff-Appellant
versus (01-139)
J.J. SWAIN [et al.].
Defendants-Appellees

SECOND MOTION FOR SANCTIONS

[EDITED]

" R. Crawford has never produced a single casein which a non-prisoner's, non-in forma pauperis complaint has been dismissed under 28 U.S.C. S. 1915. Robert Crawford is asking the Forth Circuit to do what no other court in the United States has ever done. However, Crawford never provides any supporting case

law, nor does he provide any arguments for changing the law. Therefore his request for dismissal of my complaints under 28 U.S.C.S. 1915 is in violation of Rule 11." [page 2]

" it is not my intention to argue the unsupported allegations of res judicata." [page 2]

" I contacted a former NCDOT employee and several private engineers and, basically, they told me the same things: that the problem would get worse and that eventually other slides would occur, if preventative measures were not taken. They noted two causes for the problems: the steepness of the NCDOT's bank and the NCDOT's drainpipe that was placed uphill from the NDOT's improperly sloped bank. The NCDOT... suggested that I undertake construction activity within the NCDOT's right of way to correct the problem, which I refused to do..The leis and concealment by the NCDOT engineers, Swain, Murdock and Martin caused me to delay filing a complaint against the NCDOT for the taking of my property. [3-4]

" I decided to see if the NCDOT was withholding the construction records from me alone, or, from all citizens. I asked a friend of mine to view and get copies of the construction

records [of NCSR 1116, which transverses my property]. She went to the NCDOT's district office in Horseshoe, N.C., where the records are usually kept, and asked Swain's successor, district engineer Ed Green, if she could have copies of the road construction records.

Green stated that it wasn't problem and took her to where the records were located... he discovered that the records were gone and then he remembered that the records had been removed to [N.C. Dept. of Justice/N.C.D.O.T. attorney] Malonee's office in Asheville, N.C. ...In the meantime I complained to the senior judge of the district, Judge Guice, about the Trial Court Administrator, Jerry Brewer, who was blocking my motions to compel [depositions from Swain, Murdock, Martin et al.] ..From what Brewer said to me, it was my understanding that Malonee, the NCDOT's attorney ..had urged him not to place the motions on the calendar." [page 6]

" I had first asked Swain if I could see the construction records in early August, 95. More than four years later, I received what was alleged to be some of the records." [page 8]

" ..R. Crawford stated that: 'It is further admitted that in May 1999, the records were in possession of ..Malonee who was reviewing

them for purposes of defending the litigation brought by Plaintiff [Christopher Langdon]... and appeal of that litigation.'

No explanation was given as to why Malonee had the original records removed to his office.. ..I was never told why Malonee wanted the original records, rather than copies. Of course, there are two possible explanations: (a) Malonee wanted to prevent me from viewing the records... (b) Malonee wanted to alter, or, destroy a portion of the records. Of course I have no proof that he did alter or destroy ..records, I am only stating that it is a possibility..He certainly wanted to prevent me from seeing the records. R. Crawford never cited any statute that would allow Malonee to take the records into his possession..he states 'it is admitted that ..Malonee is not the custodian of the requested records..'..

....the N.C. Public Record Law States :

' Every custodian of public record shall permit any record in the custodians custody to be inspected and examined at reasonable times and under reasonable supervision by any person..' N.C.G.S. 132-6(a). As long as Malonee had the records, they couldn't be inspected by me, or anyone else." [page 9-10]

" I also stated that I hadn't received certification of the records...Crawford

responded in a letter as follows:

' The Public Records Act does not require that 'certified' copies be provided.' Letter of R. Crawford, dated October 7th, 1999.
[but see] ' Persons requesting copies of public records may request that the copies be certified.' N.C.G.S. 132-6.2(b).

It is obvious that R. Crawford intentionally misrepresented the law in order to get me to drop my complaint." [page 11]

" I was denied access to the public records, by Swain, as early as August 95. I was denied access to the records when they were removed to Malonee's office in 1998. I was denied access to the records when Judy Cook went to the district engineer's office in 1999 and attempted to get copies of the records on my behalf." [page 12]

" It is also obvious that the claim of frivolousness was made up to prevent a full and fair hearing on my claims and to greatly increase the time and cost of this litigation." R. Crawford stated in his brief before the Court, on page 9, that the defendants have acted in good faith. The events described herein prove that statement is false with regards to defendant Swain....

Therefore, the Plaintiff _Appellant respectfully requests the following relief:

(A) all cost of this appeal be paid by the defendant-appellees and/or their attorney.. any other relief that the court may deem just.

I, Christopher Langdon, solemnly affirm under oath that everything contained herein is true and correct, except those items asserted on information and belief, and those items I believe to be true.

Christopher Langdon,
Plaintiff-Appellant "s/_____".
1835 Edwin Blvd., Winter Park, Fla. 32789
407-647-7539

Signed and suscribed to before me this the 26th day of November, 2001.
Notary public "s/_____".
Samuel Martin
My Commission DD0262261
Expires May 15, 2005

I hereby certify that I have mailed a copy of the second motion for sanctions to: R. Crawford, 1505 Mail Service Center, Raleigh, N.C. 27699-1505, this the 27th day of November, 2001.

I hereby certify that I contacted R. Crawford regarding this motion via fax and asked him if he wished to discuss it. He did not respond.

Christopher Langdon "s/_____".